



Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

July 26, 1993

Honorable John Whitmire
Chairman
Committee on Criminal Justice
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

Letter Opinion No. 93-59

Re: Whether a salaried municipal police officer may serve simultaneously as a salaried municipal judge in a different city (ID# 20331)

Dear Senator Whitmire:

You have requested our opinion as to whether a salaried municipal police officer is eligible to serve simultaneously as a salaried municipal judge in a different city, including a city which is located in the same county as the city in which he is employed as a police officer.

In a recent opinion addressed to you, Letter Opinion No. 93-27 (1993), we said that a municipal police officer is not *as a matter of law* barred from serving as an elected commissioner of another city in the same county. We noted there that, although the question of whether a police officer holds an "office" for constitutional purposes ultimately requires the resolution of factual inquiries which we cannot address, it is also the case that "under ordinary circumstances, a municipal police officer performs his duties under the direction and control of others, and thus, does not hold an 'office.'" See Attorney General Opinion DM-212 (1993). This result, which we today affirm, is equally applicable to the circumstances you now present, and thus, article XVI, section 40 of the Texas Constitution is ordinarily not an impediment to a police officer's serving in the capacity of municipal judge in a different city.

Letter Opinion No. 93-27 also considered the effect of that portion of the common-law doctrine of incompatibility referred to as "conflicting loyalties," and noted that this kind of incompatibility has not been applied to cases in which one position is an *office* and the other position is an *employment*. See Attorney General Opinion JM-1266 (1990). In the situation you pose, the municipal judge is clearly an "officer," while the police officer is probably *not* an officer. In our opinion, however, incompatibility would likely result if the individual, in his capacity as police officer, regularly appears as a witness in the municipal court proceedings of the city which employs him as judge.

The jurisdiction of municipal courts is set forth in chapters 29 and 30 of the Government Code, and in article 4.14 of the Code of Criminal Procedure. Both the civil

and criminal jurisdiction of such courts is limited to cases arising within the corporate limits of the municipality.

It is at present the case, however, that "city police officers have *county-wide* jurisdiction to arrest offenders." *Angel v. State*, 740 S.W.2d 727 (Tex. Crim. App. 1987). In this *en banc* plurality decision, the Texas Court of Criminal Appeals overturned a long string of cases relating to the territorial jurisdiction of a police officer.¹ See also Attorney General Opinion DM-212 (1993). Thus, there exists the possibility, if not the likelihood, that the police officer of whom you here inquire will have occasion to arrest a defendant *within* the corporate limits of the municipality in which he sits as judge.

Nevertheless, we do not believe that even the *probability* of such occurrence is sufficient to result in *incompatibility as a matter of law*. Unless it can be demonstrated that the police officer, in his capacity as police officer, is likely to appear as a witness in the municipal court of the city in which he sits as judge, no incompatibility will arise. Since that determination is a factual one, the ultimate decision must be made by the governing bodies of the two cities.

In the wake of *Angel, supra*, it is clear that a municipal police officer is not as a matter of law barred from serving as a municipal judge of a city in a *different* county.

S U M M A R Y

A police officer employed by a municipality is not *as a matter of law* prohibited from serving as a municipal judge in a different city, either within the same county or in another county.

Yours very truly,



Rick Gilpin
Deputy Chief
Opinion Committee

¹One group of decisions, epitomized by *Hurley v. State*, 234 S.W.2d 1006 (Tex. Crim. App. 1950), held that a peace officer was empowered to "make a warrantless arrest *anywhere in the state*." *Angel, supra*, at 732. Another group of cases, exemplified by *Weeks v. State*, 106 S.W.2d 275 (Tex. Crim. App. 1937), held that a city police officer had no jurisdiction to act outside the corporate limits of his municipality. *Angel, supra*, at 735. A third series, of which *Lopez v. State*, 652 S.W.2d 512 (Tex. App.—Houston [1st Dist.] 1983) *aff'd*, 708 S.W.2d 446 is illustrative, declared that a municipal police officer's jurisdiction is limited to the geographical limits of his *county*. *Angel*, 740 S.W.2d at 728 n.2. Prior to *Angel*, several courts of appeal had reached conflicting results on the issue. But *Angel* may not itself be the last word: three justices dissented, three others filed a "concurring and dissenting" opinion, one justice "joined in part and dissented in part," and another justice "concurred in the result."